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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 325

MAY R. KIEFERDORF,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

G. D. SCHILLING,
300 Montgomery Street, San Francisco, California,
Attorney for Petitioner.

KENNETH M. JOHNSON,
300 Montgomery Street, San Francisco, California,
Of Counsel.

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MAY R. KIEFERDORF,
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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

May R. Kieferdorf petitions that a writ of certiorari issue to review the decision and decree of the United States Circuit Court of Appeals for the Ninth Circuit in the cause numbered and entitled 10,484, May R.

Kieferdorf, Petitioner, v. Commissioner of Internal Revenue, Respondent, said decision being made and filed on May 6, 1944. (R. 51.) Said decision and decree affirmed a prior determination by the Tax Court of the United States promulgated on March 16, 1943. (R. 20.) A petition for a rehearing before the United States Circuit Court of Appeals for the Ninth Circuit was denied June 2, 1944. (R. 60.)

I.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

Petitioner's husband, W. J. Kieferdorf (hereinafter referred to as decedent) was a resident of San Francisco, California, and died testate December 3, 1939, being survived by his widow, the petitioner herein, and two minor children.[1] In March, 1940, the executor of the estate of the decedent filed an income tax return reporting the income received by decedent during 1939. The tax shown to be due on such return was $557.31, which amount is not disputed. This tax was not paid by the executor.

In the probate proceedings petitioner petitioned for and was granted certain payments from the estate as a family allowance under the provisions of Section 680 of the Probate Code of the State of California. Petitioner also petitioned for and obtained a judgment

[1]The facts were stipulated to before the Tax Court and are found in the Record at pages 16 to 20 inclusive.

setting aside to her certain proceeds of insurance policies as property exempt from execution under the provisions of Section 660 of the Probate Code of the State of California.[2]

The Commissioner of Internal Revenue assessed the income tax liability of the decedent against petitioner as a transferee under the provisions of Section 311 of the Internal Revenue Code.[2] (26 USCA 311; R. 13.)

The assessment was contested before the Tax Court of the United States and that Court held that no transferee liability was incurred because of the payment of the family allowance, but that transferee liability resulted from the setting aside to petitioner from the estate the property therein exempt from execution. (R. 21-31.) Two judges of the Tax Court (including the judge who tried the case) dissented, holding that neither the payment of family allowance, nor the obtaining of a judgment setting aside the exempt property, created any transferee liability. (R. 32-38, inclusive.) A petition for review of the determination of the Tax Court was filed in the United States Circuit Court of Appeals for the Ninth Circuit and the latter Court affirmed the determination of the Tax Court. (R. 51-59, inclusive.)

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[2]This and other statutory provisions concerned are set forth in the Appendix to the Brief in support of this Petition filed herewith.

II.

STATEMENT PARTICULARLY DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT IN QUESTION.

(a) Nature of the case and statutory provisions supporting jurisdiction.

This case is concerned with whether under the facts petitioner incurred a transferee liability enforceable under Section 311 of the Internal Revenue Code. Such liability was found to exist in the decision promulgated by the Tax Court of the United States, which decision, upon petition for review, was affirmed by the Circuit Court of Appeals on May 6, 1944; rehearing denied June 2, 1944. The majority opinion of the Tax Court is found in the Record at pages 20 to 31, inclusive; the dissenting opinion is found at pages 32 to 38. The determination of the Circuit Court of Appeals is found in the Record at pages 51 to 58.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended (28 USCA 347(a)) and petitioner also relies upon Rule 38, paragraph 5(b) of this Court, and upon Section 1008 Revised Statutes (28 USCA 350.)

(b) Cases believed to sustain jurisdiction.

Phillips v. Commissioner of Internal Revenue, (1931), 283 U.S. 589;

Hulburd v. Commissioner of Internal Revenue, (1935), 296 U.S. 300.

(c) Grounds upon which it is contended that the questions involved are substantial.

It is the first contention of petitioner that she was not a transferee or distributee within the meaning of these words as used in Section 311 of the Internal Revenue Code and thus in no way could sustain transferee liability. A substantial question of law exists as to the meaning of these words as used in the statute in question.

Petitioner's principal contention is that, assuming for the purposes of argument that she might be deemed a transferee or distributee within the meaning of Section 311, *transferee liability* is determined by state law. Under California law no transferee liability was incurred, and thus petitioner was not liable for income taxes due from the estate or for any other debt of the estate. Petitioner merely exercised certain statutory rights which transferred title to certain property from the estate to her. A substantial question of law arises in relation to a conflict between federal tax legislation and state property rights. This conflict has been mentioned by this Court, but not resolved in relation to the particular statute in question. In *Phillips v. Commissioner of Internal Revenue* (1931), 283 U.S. 589, 602, this Court said:

> "We have, therefore, no occasion to decide whether the right of the United States to follow transferred assets is limited by any State laws."

The questions involved are also substantial in that they relate to social legislation passed by States for the protection of widows and orphans. For the pro-

tection of this class of persons the State has created certain property rights; this is deemed of benefit to the welfare of the State and its citizens as a whole. This case presents the substantial question of whether this policy of the State acting within its proper sphere may be destroyed by the Federal Government in the collection of taxes.

III.

THE QUESTIONS PRESENTED.

The two principal questions of law presented in this petition are as follows:

(a) Was petitioner a transferee or distributee as these words are used in Section 311 of the Internal Revenue Code?

(b) Assuming that petitioner was a transferee within the meaning of Section 311 of the Internal Revenue Code, is it possible for her to incur income tax liability as to the tax of another where under State law no transferee liability was incurred?

A third question is concerned with the operation of Section 1119 of the Internal Revenue Code (28 USCA 1119) which places on the Commissioner of Internal Revenue the burden of showing transferee liability. It is contended that this burden has not been sustained in this case.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The Circuit Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court. Practically every State in the Union has legislation similar to that involved in this proceeding. Such legislation provides that a widow or minors may obtain from the estate of a deceased husband or father certain property. Such property is taken free and clear from the claims of creditors of the estate. Such creditors would normally include the United States, although in the particular case the Circuit Court of Appeals held to the contrary. Petitioner presents a situation which is bound to occur in many jurisdictions and it is essential to the orderly administration of justice and the efficient operation of the federal tax system that this Court resolve the conflict which here exists between federal power and state property law.

In deciding the case here presented the Circuit Court of Appeals is in conflict with the decisions in other circuits which hold that under Section 311 of the Internal Revenue Code, transferee liability is determined by State law.[3] Under California law petitioner incurred no transferee liability,[4] but, nevertheless, the Circuit Court of Appeals found her to be

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[3] *Harwood v. Eaton* (1933), 68 Fed. (2d) 12; *Botz v. Helvering* (1943), 134 Fed. (2d) 538.

[4] *Estate of Pillsbury* (1917), 175 Cal. 454, 166 Pac. 11; *Estate of Crosby* (1935), 2 Cal. (2d) 470, 41 Pac. (2d) 928.

liable for the tax of another. It is essential that this conflict in the decisions of the Circuit Courts should be resolved.

V.

PRAYER FOR THE ISSUANCE OF THE WRIT.

Wherefore, petitioner prays that this Court issue its writ of certiorari directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court on a date certain, to be therein designated, a full and complete transcript of the record and all proceedings in the cause numbered and entitled in said Court "10,484, May R. Kieferdorf, Petitioner, v. Commissioner of Internal Revenue, Respondent," to the ends that said cause may be reviewed by this Court as provided by law, that said judgment of said Circuit Court of Appeals be reversed and that your petitioner have such other and further relief in the premises as may seem just.

Dated, San Francisco, California,
July 31, 1944.

G. D. SCHILLING,
Attorney for Petitioner.

KENNETH M. JOHNSON,
Of Counsel.

CERTIFICATE OF COUNSEL.

The foregoing petition for writ of certiorari, together with the hereinafter contained supporting brief, is in the opinion of the undersigned attorney for petitioner well founded in point of fact and law, is presented in good faith and is not interposed for delay.

Dated, San Francisco, California,
July 31, 1944.

G. D. SCHILLING,
Attorney for Petitioner.

In the Supreme Court

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United States

OCTOBER TERM, 1944

No.

MAY R. KIEFERDORF,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

REFERENCE TO OFFICIAL REPORT OF THE OPINIONS DELIVERED IN THE COURTS BELOW.

There are three prior opinions in this case. The first is by the Tax Court of the United States reported in 1 T.C. 772 (promulgated Mar. 16, 1943) and found in the record of this case at pages 21 to 31 followed by a dissenting opinion. The third opinion is by the United States Circuit Court of Appeals for the Ninth Circuit and is reported in 142 Fed. (2d) 723 (filed May 6, 1944) and is found in the record of this case at pages 51 to 58, inclusive.

II.

A CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The decision of the United States Circuit Court of Appeals was entered on May 6, 1944. (R. 51.) A petition for rehearing before said Court was denied on June 2, 1944. (R. 60.)

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended (28 USCA 347(a)) and petitioner also relies upon Rule 38, paragraph 5(b) of this Court. Jurisdiction is also sustained by Section 1008 of Revised Statutes, 28 USCA 350.

The following cases are believed to sustain jurisdiction:

Phillips v. Commissioner of Internal Revenue (1931), 283 U.S. 589;

Hulburd v. Commissioner of Internal Revenue (1935), 296 U.S. 300.

III.

A CONCISE STATEMENT OF THE CASE.

In the estate in probate of her late husband petitioner filed a petition requesting that the property in said estate exempt from execution be set aside to her. This was a right granted to petitioner under California law.[5] A judgment of the Probate Court was

[5]The statutory provision concerned is set forth in the Appendix of this brief, being Section 660 of the California Probate Code.

entered granting petitioner's petition; thereafter, the executor of the estate paid and delivered the property in the estate exempt from execution (proceeds of certain insurance policies) to petitioner. The executor of the estate in probate did not pay the income tax due as a result of income received by the decedent during the last year of his life. The Commissioner of Internal Revenue thereupon assessed the income tax of the decedent against petitioner as a transferee under the provisions of Section 311 of the Internal Revenue Code.[6] (R. 16-20, inclusive.)

Petitioner resisted this assessment before the Tax Court of the United States which in its decision sustained the Commissioner, two judges dissenting including the judge who tried the case. (R. 20, 32.) A petition for review was filed in the United States Circuit Court of Appeals for the Ninth Circuit. The Circuit Court affirmed the determination of the Tax Court. (R. 59.)

The facts out of which the controversy arose were stipulated to before the Tax Court and are set forth in the Record. (R. 16-20, inclusive.)

IV.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals for the Ninth Circuit erred in affirming the majority opinion of the Tax Court in the following particulars:

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[6]The pertinent provisions of Section 311 of the Internal Revenue Code are set forth in the Appendix to this brief.

1. In finding that petitioner under the facts here presented was a distributee within the meaning of that word as used in Section 311 of the Internal Revenue Code.

2. In finding that petitioner had incurred transferee liability where under the State law no such liability was incurred.

3. In failing to show that petitioner was liable at law or in equity for the tax of another.

4. In failing to consider Section 1119 of the Internal Revenue Code (26 USCA 1119) which places on the Commissioner the burden of showing that a petitioner is liable as a transferee.

V.

SUMMARY OF ARGUMENT.

(a) PETITIONER IS NOT A TRANSFEREE OR DISTRIBUTEE WITHIN THE MEANING OF THESE WORDS AS USED IN SECTION 311 OF THE INTERNAL REVENUE CODE.

Under the factual situation in this case it is the contention of petitioner that she is neither a *transferee nor a distributee* under any recognized definition, lay or legal, of these words.

(b) TRANSFEREE LIABILITY IS DETERMINED AT LAW OR IN EQUITY UNDER STATE LAW, AND UNDER CALIFORNIA LAW NO TRANSFEREE LIABILITY WAS CREATED.

For the purpose of argument only, it is assumed but not admitted that petitioner may be deemed a transferee. That transferee liability is determined by local law is established by at least three decisions of the Circuit Courts of the United States. In the present case petitioner incurred no transferee liability under local law. Thus she was not liable for the tax of another.[7]

(c) THE BURDEN TO SHOW TRANSFEREE LIABILITY WAS ON THE COMMISSIONER AND THIS BURDEN HAS NOT BEEN SUSTAINED.

Section 1119 of the Internal Revenue Code (26 USCA 1119) provides that the burden of showing transferee liability rests on the Commissioner. This section is entirely ignored in the decision of the Circuit Court of Appeals. The record can be searched from cover to cover and all that is disclosed is a situation where no transferee liability exists under California law. The Commissioner has shown no statute, decision or fact to create transferee liability. Thus the Commissioner has failed entirely in sustaining the statutory burden of proof placed upon him.

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[7]Supporting cases are cited under "ARGUMENT" following.

VI.

ARGUMENT.

(a) PETITIONER IS NOT A TRANSFEREE OR DISTRIBUTEE WITHIN THE MEANING OF THESE WORDS AS USED IN SECTION 311 OF THE INTERNAL REVENUE CODE.

Section 311 of the Internal Revenue Code, Subsection (f) defines "transferee" as follows:

> "* * * the term 'transferee' includes heir, legatee and distributee".

The process under which petitioner obtained property from the estate of a decedent has already been generally indicated and was in accordance with an express provision of the California law, Section 660 of the California Probate Code.[8] Acting under this section, petitioner, contrary to her own interest as an heir or legatee in the estate, to the interest of other heirs and legatees, to the interests of all creditors, and exercising an independent statutory right, filed a petition calling for the exercise of judicial discretion. Her petition was granted and in accordance with the mandate of the Probate Court, what she had petitioned for was delivered to her. There is nothing in this process which even remotely would constitute petitioner a transferee or distributee under any definition of these words.

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[8]This section, which is set forth in the Appendix to this Brief, provides that a widow may have set aside to her property in the estate exempt from execution. The particular property here concerned was the proceeds of insurance policies having an annual premium of less than $500. Such proceeds are exempt from execution under the California exemption statutes. California Code of Civil Procedure, Section 690.19.

Procedure under Section 660 of the Probate Code has been considered by the California Courts on numerous occasions and the decisions make it clear that petitioner did not take as an heir, distributee or legatee but obtained whatever she received as result of favorable action on a petition predicated upon an independent statutory right. In *Estate of Kennedy* (1910), 157 Cal. 517, 522, 108 P. 280, the Court, speaking of property set aside to a widow, said:

> "What the widow takes under such orders of the probate court she does not take by will. It is equally clear that she does not take property so set apart by the probate court 'by the intestate laws of this state.' The language 'pass, by will or by the intestate laws of this state' means to pass by virtue and force of the law of this state governing testate or intestate succession. (*In re Joyslin's Estate,* 76 Vt. 88 [56 Atl. 281].) 'The term "Intestate laws" is intended to cover the statute of descents which relates to the descent of real estate, and the statute of distribution which provides for the distribution of the personal property of decedent after the payment of his debts, * * * and after the setting apart to the widow and minor children of the exemptions specified * * * These exempt articles are in no way governed by the statute of distribution.' "

In *Estate of Ettlinger* (1943), 56 C. A. (2d) 603, 607, 132 Pac. (2d) 895 the Court, speaking of the nature of a widow's right in relation to a probate homestead, which is of the same nature as the right to exempt property, stated:

> "Here the widow is not seeking any right as an heir or beneficiary under the will. She is merely

> pursuing her statutory right to seek a family allowance and a probate homestead."

In spite of the foregoing the Circuit Court of Appeals found that petitioner took as a distributee. In accomplishing this the Court relied upon a further definition of "distributee" found in Regulations 94 for the Act of 1936 in which the Treasury Department defined the words "transferee" and "distributee" as follows:

> "The term 'transferee' as used in this section includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 112, *and all other classes of distributees.*" (R. 54.) (Emphasis supplied by Circuit Court.)

However, this general language in the Regulations does not appear to add anything to the meaning of the word "distributee". The word "distribution" is defined in Webster's International Dictionary, Second Edition (1934) as

> "act of distributing; apportionment among several or many; as, *distribution* of gifts"

and a "distributee" is

> "one to whom something is distributed."

In legal terminology the word "distributee" has an even narrower meaning. It means one who takes personal property from an estate in probate where the decedent dies intestate.

"*Distributees.* The persons who are entitled under the statute of distribution to the personal estate of one who has died intestate."

Bouvier's Law Dictionary, Rawle's Third Revision (1914) Vol. I, p. 896.

"As we are considering the meaning and intent of the word as used in the Act of Congress, we are inclined to agree with the government that, as distinguished from an heir, it should receive the more general and universal interpretation, namely, that a 'distributee' is one entitled to the personal property of an intestate under the laws of distribution."

Parrott Estate Company v. McLaughlin (1937), 89 F. (2d) 188, 190.

Thus under neither the lay nor legal definition of the word "distributee" does it appear that petitioner would even remotely come within the definitions. Applying the well known doctrine of *ejusdem generis* and recognizing that if statutes are to have a meaning, words used must be given their usual definitions, the term "and all other classes of distributees" does not appear to add anything to the definitions found in Section 311 itself.

When we speak of the word "transferee" our mind immediately connects with this the moving party, i. e., "transferor." In the case presented petitioner was the moving party. She utilized the processes of law to obtain a judgment in her favor which could have been enforced against the estate with all the usual powers of the Court. She was no

more a transferee than one who sues another on a promissory note and obtains a judgment which is realized out of the assets of the defendant. In summary, the situation here presented does not fall within that covered by Section 311 of the Internal Revenue Code.

In conclusion it should be emphasized that although the amount concerned is small in the present case, the principle involved is of great importance because practically all States of the Union have statutes similar to the one here considered and the rights of widows under existing federal tax legislation should be clarified.

(b) TRANSFEREE LIABILITY IS DETERMINED AT LAW OR IN EQUITY UNDER STATE LAW, AND UNDER CALIFORNIA LAW NO TRANSFEREE LIABILITY WAS CREATED.

(1) State law determines transferee liability.

This portion of the argument is based upon the assumption, which petitioner does not admit, that she may be deemed a transferee. At the present time it is well settled that Section 311 of the Internal Revenue Code does not purport to create transferee liability but merely authorizes a more effective remedy for enforcing a liability which must exist at law or in equity quite independent of the statute in question. In *Phillips v. Commissioner of Internal Revenue,* (1930), 283 U.S. 589, 594, 75 L. Ed. 1289, 1295, this Court in considering this section said:

"Section 280(a)(1)[9] provides the United States with a new remedy for enforcing the existing 'liability at law or in equity.' The quoted words are employed in the statute to describe the kind of liability to which the new remedy is to be applied and to define the extent of such liability."

The Circuit Courts in at least three cases have definitely stated that this liability at law or in equity must be found under the laws of the State where the transaction occurred.

"In Hatch v. Morosco Holding Co., 50 F. (2d) 138, we expressed the view that section 280 imposes no new obligation upon the transferee of property of a taxpayer, but permits collection from him, by a summary procedure *to the extent that the municipal law makes him liable at law or in equity for the transferor's taxes.*"

Harwood v. Eaton (1933), 68 Fed. (2d) 12, 13.[10]

"In the statutory method of collecting income taxes is provided the liability of transferees of the taxpayer. That liability is 'the liability, at law or in equity, of a transferee of property of a taxpayer.' Int. Rev. Code, §311(a)(1), 26 U.S.C.A. Int. Rev. Code §311(a)(1). *Whether a transferee is liable 'at law or in equity' depends upon State law.*"

Botz v. Helvering (1943), 134 Fed. (2d) 538, 542.

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[9]The reference is to Sec. 280(a)(1) of the Revenue Act of 1926, which is now Sec. 311 of the Internal Revenue Code.

[10]Emphasis supplied unless otherwise indicated.

> "This section 'provides the United States with a new remedy for enforcing the existing "liability, at law or in equity" ' of a transferee. Phillips v. Comm., 283 U.S. 594, 51 S. Ct. 608, 610, 75 L. Ed. 1289. It does not create or impose an obligation not already fixed by municipal law. It merely provides a summary remedy for its direct enforcement. Phillips v. Comm., supra. Hatch v. Morosco Holding Co. (C.C.A.), 50 F. (2d) 138. In short, the act is procedural only, operating to put in the place of the taxpayer a transferee of his who has received money or property under circumstances making the transfer void or voidable as to creditors."
>
> *Liquidators of Exchange Nat. Bank of Shreveport v. United States* (1933), 65 F. (2d) 316.

No Court has held that such liability is created under any federal legislation or doctrine. Certainly since *Erie R. Co. v. Tompkins* (1938), 304 U.S. 64, there can be no separate federal judicial rule for the purpose of determining liability in a situation such as is here considered. We are thus perforce compelled to ask what the California Courts of last resort have said.

(2) Under California law no transferee liability exists.

The California Courts have very definitely, without question, determined that where a widow takes property from an estate in probate under Section 660 of the California Probate Code, she takes it free and clear from the claims of all creditors of the estate.

> "The manifest object of the section (1465) is the support of the family and to make provision for

their support and maintenance. These demands of the family are deemed superior to those of the heirs or creditors."

Estate of Pillsbury (1917), 175 Cal. 454, 458, 166 Pac. 11, 13.[11]

"It is settled in this state, contrary to some jurisdictions, that exempt property passing to the persons designated in Section 660, *supra,* is, by virtue of the provisions of that section free * * * from the debts of the decedent * * *"

Estate of Crosby (1935), 2 Cal. (2d) 470, 474, 41 Pac. (2d) 928, 930.

As to the California rule there can be no doubt and thus if transferee liability is determined by local law, petitioner incurred none and the decision of the Circuit Court of Appeals is in error.

(3) Liability cannot be found under federal law.

The next question is whether transferee liability of petitioner can be found under any existing federal law. Here it must be emphasized that we are not concerned with the question of whether Congress could by appropriate legislation create what may be called "federal transferee liability." Our question is whether Congress has done so. As already indicated, Section 311 of the Internal Revenue Code did not create transferee liability but merely set forth a remedy to be used where such liability exists at law or in equity. Since *Erie R. Co. v. Tompkins,* supra,

[11]The statutory reference is to Section 1465 of the California Code of Civil Procedure. This section now appears as Section 660 of the California Probate Code.

there certainly can be no "federal liability at law or in equity" founded in "general law" and outside of legislation.

A survey of the various situations where there is an established rule recognizing a dominance of federal law over state law, indictates that petitioner's situation is not covered by any such rule.

We are not here concerned with whether the federal government could reach the property concerned through its process of distraint or whether State exemption statutes would be effective. The reference in Section 660 of the Probate Code to property exempt from execution is used merely as a convenient means of definition. If such property remains in the estate, even under California law it would not be exempt from execution. *Estate of Starr* (1920), 183 Cal. 121, 190 Pac. 625. It is freely admitted that the insurance proceeds in the hands of petitioner would be subject to *her* federal tax indebtedness; the principal question is how did petitioner become liable for the tax of another where under local law there is no transferee liability?

Neither are we concerned with the question of whether or not the federal government is bound by procedural requirements in probate proceedings in relation to the presenting of claims, or whether the federal government is bound by State statutes of limitation. No tax lien is involved in the present case. Rules granting priority to debts due the United States are not involved. The estate of the decedent in question was not indebted to petitioner.

We are solely concerned with a property right vested in petitioner under California law. In this connection and in considering the impact of federal tax legislation upon State law, this Court in *Helvering v. Stuart* (1942), 317 U.S. 154, 163, 87 L. Ed. 154, 159, said:

> "Once rights are obtained by local law, whatever they may be called, these rights are subject to the federal definition of taxability. Recently in dealing with the estate tax levied upon the value of property passing under a general power, we said that 'state law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed.' "

To paraphrase the language just quoted, State law creates or denies liability in various situations involving transferees. The Internal Revenue Code in Section 311 merely designates a summary method of collection where liability has been created by State law. Federal legislation does nothing more. To the best knowledge of petitioner her case is the first where transferee liability has been inflicted in the face of State law to the contrary.

A simple reading of Section 660 of the Probate Code of California is sufficient to indicate that it is one defining and creating property rights. This section in itself does not exempt any property from execution. It merely defines a situation and the type of property that upon judicial determination may be transferred from one ownership to another. The section is concerned with the vesting of title to property and the matter is thus one particularly within the

province of the State. In *Cannon v. Nicholas* (1935), 80 F. (2d) 934, 936, the Court said:

> "The Supreme Court of the United States, in the Community Property and other cases, has held that state law determines the ownership of property subject to its jurisdiction, and that a wife's property cannot be taken for her husband's taxes. Poe v. Seaborn, 282 U.S. 101, 51 S. Ct. 58, 75 L. Ed. 239; Hoeper v. Tax Commission, 284 U.S. 206, 52 S. Ct. 120, 76 L. Ed. 248."

In effect the determination of the Circuit Court of Appeals in this case is a reversion to *Swift v. Tyson* (1842), 16 Pet. 1, in that the Federal Court ignores what the State Courts have said and applies its own conception of where liability should exist. This philosophy no longer exists in our judicial system since *Erie R. Co. v. Tompkins,* supra.

In view of the foregoing the question may be properly asked as to how the Circuit Court of Appeals reached the conclusion which it did. The crux of the decision is found in the following language contained therein:

> "Furthermore, it is the opinion of this Court that in the last analysis the Federal Government can collect the taxes due whether the petitioner is a transferee under the California law or not on the principle that the California law cannot create exemptions from execution or attachment for the collection of Federal taxes." (R. 56.)

In the foregoing statement there are two fundamental errors which vitiate entirely the Court's deci-

sion. In the first place the Court states that even if petitioner was not a transferee, the Government could collect the taxes. The Court forgets that the entire proceeding is predicated on the assumption that petitioner was a transferee. Secondly, whether California law can or cannot create exemptions from execution or attachment for the collection of federal taxes, rests on the intent of Congress. In speaking of the relation between federal and state legislation in the collection of taxes, this Court in *Helvering v. Stuart* (1942), 317 U. S. 154, 161, said:

> "The intention of Congress controls what law, federal or state, is to be applied."

Referring again to the majority decision of this Court in relation to Section 311 of the Internal Revenue Code (*Phillips v. Commissioner of Internal Revenue,* supra) it is clear that the necessary implication from the language of the section with which we are concerned, is that transferee liability is determined by state law. Congress might create transferee liability, but to the best knowledge of petitioner has not done so in the situation here considered.

In brief, the determination of the Circuit Court of Appeals is contrary to all known applicable federal and state decisions.

(4) Social and economic significance.

The decision of the Circuit Court of Appeals in this case also has a deeper social and economic significance than is indicated by the particular facts con-

sidered. The statute under which petitioner took in the present case is a part of the general humanitarian policy of the State to the effect that it is better in the long run for a widow to be supported and a family maintained as a unit than to permit creditors to take their pound of flesh. This statute is also based on the conception that it is better for the earnings of a husband accumulated over a lifetime to pass in part to the widow or minor children than to satisfy creditors including the tax collector and to create candidates for public charity. Thus petitioner's case is concerned with much more than property rights alone. The expressed social policy of the State in relation to the security of widows and orphans is also involved. While in cases where it is permissible under the Constitution, the Federal Government may render State legislation ineffective, it should pause and carefully balance all values where more than monetary interests must be considered.

This case also has an additional economic significance in another sense. In order for the federal tax system to have the respect and cooperation of the taxpaying public, it must operate under and in accordance with law. Arbitrary action is always the parent of avoidance and evasion.

(c) THE BURDEN TO SHOW TRANSFEREE LIABILITY WAS ON THE COMMISSIONER AND THIS BURDEN HAS NOT BEEN SUSTAINED.

Section 1119 of the *Internal Revenue Code* (26 USCA 1119) reads as follows:

> "(a) *Burden of proof.* In proceedings before the Board the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax."

The Circuit Court of Appeals in its decision in petitioner's case has entirely ignored this most important provision. All that the record shows is a situation where the property passed from one ownership to another and where under California law there was no resultant transferee liability. Far from showing transferee liability, all that the Commissioner has shown in this case is a factual situation where under local law there is no transferee liability. The importance of this section cannot be over emphasized because we are here concerned with an extraordinary legal situation, i.e., where one individual becomes liable for the tax of another. In order to establish this more than a mere scintilla of support is required. The burden is not on petitioner to show that no transferee liability exists, but directly and by mandate of Congress upon the Commissioner to show such liability. There is an entire failure on the part of the Commissioner in this respect and this failure which is fundamental to the decision of this case has been entirely ignored by the Circuit Court of Appeals.

VII.

CONCLUSION.

Petitioner respectfully urges:

1. That she is not a transferee or distributee within the meaning of these words as used in Section 311 of the Internal Revenue Code;

2. That if she may be deemed a transferee, then transferee liability is determined by local law and under local law transferee liability was not incurred;

3. That the Commissioner of Internal Revenue has not sustained his statutory burden of proof to show transferee liability;

4. That the case is important because it strikes at a fundamental humanitarian policy of the State and overrides State property law in a situation which exists generally throughout the United States;

5. That the case as now decided constitutes taxation without legislation and amounts to blind judicial concurrence in arbitrary administrative action.

Petitioner's case taken by itself is small; however, its implications are far reaching and injustice is not measured in terms of dollars. This case is the first clear cut holding that transferee liability for federal taxes can be sustained in the absence of liability under State law. A hearing in this Court is required both because of the novelty of the doctrine which appears contrary to *Erie R. Co. v. Tompkins* and the universality of the factual situation.

The Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals should be granted and upon a full hearing the judgment should be reversed.

Dated, San Francisco, California,
July 31, 1944.

Respectfully submitted,
G. D. SCHILLING,
Attorney for Petitioner.

KENNETH M. JOHNSON,
Of Counsel.

(Appendix Follows.)

STATUTORY PROVISIONS REFERRED TO IN PRECEDING BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Probate Code of California.

§ 660. *Widow's Quarantine—Survivor's Right to Homestead and Exempt Property.*—The decedent's surviving spouse and minor children are entitled to remain in possession of the homestead, the wearing apparel of the family, the household furniture and other property of the decedent exempt from execution, until the inventory is filed. Thereupon, or at any subsequent time during the administration, the court, on petition therefor, may in its discretion set apart to the surviving spouse, or, in case of his or her death, to the minor child or children of the decedent, all or any part of the property of the decedent exempt from execution, and must set apart to such spouse or to such minor child or children the homestead selected, designated and recorded, if such homestead was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same.[1]

Code of Civil Procedure of State of California.

§690. *Exemption Law.*—The property mentioned in sections 690.1 to 690.24, inclusive, of this code, is exempt from execution or attachment, except as therein otherwise specially provided.

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[1]Section 660 of the Probate Code was formerly Section 1465 of the Code of Civil Procedure and was transferred into the California Probate Code when the latter was first created in 1931. Cases prior to 1931 therefore referred to the Section as 1465 of the Code of Civil Procedure. When the section was incorporated in the Probate Code, the words "in its discretion" were inserted after the words "the court, on petition therefor, may", all appearing in the second sentence of the section.

§ 690.19. *Life Insurance Privileges.*—All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars, or if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that said five hundred dollars bears to the whole annual premiums paid.

Internal Revenue Code.

Sec. 311. TRANSFERRED ASSETS.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * * * *

(f) *Definition of "Transferee".*—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (26 U. S. C. 311.)

(23)

SUPREME COURT, U.S.
FILED
AUG 30 1944
CHARLES ELMORE CROPLEY
CLERK

No. 325

In the Supreme Court of the United States

OCTOBER TERM, 1944

MAY R. KIRKPATRICK, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 325

MAY R. KIEFERDORF, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court of the United States (R. 21–31) is reported at 1 T. C. 772. The opinion of the Circuit Court of Appeals (R. 51–58) is reported at 142 F. 2d 723.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 6, 1944 (R. 59). An order denying the petition for rehearing was entered on June 2, 1944 (R. 60). The petition for a writ of certiorari was filed on August 7, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Under a California statute authorizing the probate court to set apart to the surviving spouse all or any part of the property of the deceased "exempt from execution", petitioner was awarded the proceeds of certain insurance policies on the life of the decedent payable to the estate. These proceeds were property "exempt from execution" under California law.

The question is whether petitioner is liable as a transferee, under Section 311 of the Internal Revenue Code, for income taxes due from the decedent, whose estate is insolvent, by reason of her receipt of such insurance proceeds.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, *infra,* pp. 10–14.

STATEMENT

The facts which were stipulated (R. 16–20) and found by the Tax Court (R. 21–24) are as follows:

Petitioner's husband, W. J. Kieferdorf, hereafter referred to as decedent, died testate, a resident of San Francisco, California, on December 3, 1939, being survived by his widow and two minor children (R. 21). The Bank of America National Trust & Savings Association was duly appointed and qualified as executor of his estate on January 3, 1940 (R. 21–22).

On March 15, 1940, the executor filed an income tax return, reporting the income received by decedent during 1939. The tax shown to be due was $557.31, and the correctness of this amount is not in issue. No part of the tax was paid by the executor though due notice and demand were served on it on or about June 1, 1940, and a second notice was served on it on or about July 31, 1940. (R. 22.)

On January 25, 1940, petitioner filed a petition in the Superior Court, in accordance with the Probate Code of California, requesting that a family allowance in the sum of $300 per month be granted for her minor children who were wholly dependent upon the estate, and for herself, she being "partially dependent thereon for support and maintenance." On February 8, 1940, the Superior Court entered an order directing that $250 per month be paid as a family allowance "during the progress of the settlement of the estate or until further order of the Court". The executor complied with the order thereunder and pursuant thereto made aggregate payments of $2,090.73, such payments being discontinued after a final payment of $90.73 on August 9, 1940, because of exhaustion of the funds of the estate. (R. 22.)

On April 5, 1940, petitioner filed another petition in the same court requesting that the property of the estate exempt from execution be set apart for the use and benefit of decedent's family. The

court set apart for their use and the executor paid to petitioner on June 6, 1940, $11,914.52 representing the proceeds of six policies of life insurance, the annual premiums on which had been less than $500 during decedent's life. After this amount was paid to petitioner, approximately $590 remained in the estate, and there were liabilities of several thousand dollars. (R. 22–23.)

The executor filed a final report covering the period from appointment to September 3, 1940. The report showed that income taxes were due on income received by the decedent during his lifetime and that such sums had not been paid because of the exhaustion of the funds and assets of the estate by payment of costs of administration, a preferred claim, the setting aside of exempt property, and the payment of a family allowance. The exempt property referred to was the proceeds of the insurance. The report asked that any after-discovered property be distributed subject to charges for unpaid administration costs, income taxes, and other claims. (R. 23–24.)

The executor was discharged and the administration of the estate was closed on or about October 9, 1940. All of the assets of the estate had been disposed of by September 3, 1940, leaving unpaid federal and state incomes taxes, and other claims in the amount of $5,452.01; also executor's commissions and attorney's fees. (R. 24.)

The Tax Court, two members dissenting (R. 32–38), held (R. 24–31) that petitioner was liable

for the unpaid income tax due from decedent for the year 1939 on the ground that California law could not create exemptions from execution or attachment for the collection of federal taxes. The Circuit Court of Appeals affirmed (R. 58).

ARGUMENT

The case was correctly decided below upon a principle of law early enunciated by this Court, and no conflict is presented.

The petitioner admits that she received the proceeds of insurance policies payable to the estate of her deceased husband in an amount more than sufficient to satisfy the unquestioned liability of the estate for income taxes due from the decedent. She pleads, however, that she is not liable as a "transferee" within the purview of Section 311 of the Internal Revenue Code (*Appendix, infra,* p. 11) on the ground that state law governs in determining transferee liability, and petitioner's receipt of these proceeds stemmed from a California statute (Probate Code of California, Section 660, *Appendix, infra,* p. 10) providing for their award to her as the taxpayer's surviving spouse, free from the claims of his creditors.

As in *Phillips* v. *Commissioner*, 283 U. S. 589, it is not necessary here to consider whether or to what extent transferee liability is predicated upon local law.[1] Petitioner was a transferee of assets of an estate even under the California law

[1] See *Botz* v. *Helvering*, 134 F. 2d 538 (C. C. A. 8th); *Harwood* v. *Eaton*, 68 F. 2d 12 (C. C. A. 2d); *Liquidators of*

upon which she relies; she took property which was part of the decedent taxpayer's estate and which, but for the probate court's order pursuant to her petition, would have remained a part of the estate. California decisions make this amply clear. *Estate of Pillsbury,* 175 Cal. 454; *Estate of Levy,* 141 Cal. 646.

We may admit, as petitioner contends (Pet. 18–19), that she was not a "distributee" of the estate in the probate sense of the term. See *Parrott Estate Co.* v. *McLaughlin,* 89 F. 2d 188 (C. C. A. 9th). This does not aid her case. The federal statute did not attempt a universal definition of the term "transferee", but as the court below pointed out (R. 54–55), regulations [2] early promulgated, which have the force of law because of continuation through successive reenactments of the statute (*National Lead Co.* v. *United States,* 252 U. S. 140), included in the term "transferee" not only the distributee of a decedent's estate in the technical sense, but also "all other classes of distributees". In fact, the petitioner herself defines (Pet. 18) the word "distribution" as "apportionment among several or many; as, distribu-

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Exchange Nat. Bank v. *United States,* 65 F. 2d 316 (C. C. A. 5th); *Hatch* v. *Morosco Holding Co.,* 50 F. 2d 138 (C. C. A. 2d); cf. *Commissioner* v. *Western Union Telegraph Co.,* 141 F. 2d 774 (C. C. A. 2d), overruling *Harwood* v. *Eaton, supra.*

[2] See Sec. 19.311–1, Treasury Regulations 103, *Appendix, infra,* pp. 13–14. See also Art. 311–1 of Treasury Regulations 101 and Art. 311–1 of Treasury Regulations 94, under the 1938 and 1936 Revenue Act respectively.

tion of gifts". Furthermore, as the Third Circuit recently said in construing the similarly worded transferee definition in the gift tax law (Section 526 (f) of the Revenue Act of 1932, 47 Stat. 169), the term transferee is to be taken in its common usage "as one to whom something is transferred", *i. e.*, a "recipient". *Fidelity Trust Co.* v. *Commissioner,* 141 F. 2d 54, 57. Indubitably the petitioner was a "recipient".

The basis of transferee liability under the federal statute is "liability, at law or in equity." Section 311 of the Internal Revenue Code. Since the effect of petitioner's withdrawal of these proceeds was to render the taxpayer's estate insolvent, she became to the extent of such withdrawal liable in equity under familiar principles obtaining in California as elsewhere. The situation is analogous to one in which a corporation divests itself of all of its assets by distribution to its stockholders; in such case, equity will require the stockholders to answer to the corporation's creditors. *Leighton* v. *United States,* 289 U. S. 506; *Pierce* v. *United States,* 255 U. S. 398; *Pann* v. *United States,* 44 F. 2d 321 (C. C. A. 9th); *United States* v. *Garbutt,* 35 F. 2d 924 (C. C. A. 10th). Similarly, after the assets of an estate have been distributed, a claim is recoverable in equity from the distributees to the extent of the distributed property. *Rankin* v. *City of Big Rapids,* 133 Fed. 670 (C. C. A. 6th); see also *United States* v. *Updike,* 281 U. S. 489; *Baum-*

gartner v. *Commissioner,* 51 F. 2d 472 (C. C. A. 9th); *Levy* v. *Commissioner,* 48 F. 2d 725 (C. C. A. 9th); *Huntley* v. *Gile,* 32 F. 2d 857 (C. C. A. 9th).

The California statute cannot act as a shield against petitioner's liability. Manifestly, it is nothing more nor less than an ordinary "homestead" provision for the benefit of a debtor's dependents after his death. It does not mention the United States, and in the absence of a clear intention to refer to the United States, should not be construed as having such purpose. *United States* v. *Herron,* 20 Wall. 251. At any rate, state homestead and exemption laws are not laws barring claims of the United States. *United States Bank* v. *Halstead,* 10 Wheat. 51; *Wayman* v. *Southard,* 10 Wheat. 1; see also *Fink* v. *O'Neil,* 106 U. S. 272; *Shambaugh* v. *Scofield* (W. D. Tex.), decided March 11, 1942 (1942 C. C. H., par. 9413); *United States* v. *Howell,* 9 Fed. 674 (W. D. N. C.); *Staley* v. *Vaughn,* 50 S. W. 2d 907 (Tex. Civ. App.). No state law can impede the collection of the national revenue, for that is imperative to the survival of the Federal Government and the accomplishment of the objects for which it was established. *Bank of Commerce* v. *New York City,* 2 Black 620; see also *Michigan* v. *United States,* 317 U. S. 338; *United States* v. *Texas,* 314 U. S. 480.

Congress has adopted its own "public policy" with respect to exemptions of citizens from the claims of their National Government. It has

specifically enumerated certain items of property which may not be taken in satisfaction of those claims. Life insurance proceeds are not in the list. Internal Revenue Code, Sections 3690 and 3691 (*Appendix, infra,* pp. 12–13). That list cannot be supplemented by state law. *United States* v. *Howell,* 9 Fed. 674 (W. D. N. C.), cf. *Proutt's Estate* v. *Commissioner,* 125 F. 2d 591 (C. C. A. 6th). If a state cannot exempt the property of its citizens from the claims of the Federal Government directly, it cannot accomplish the same result indirectly by authorizing the withdrawal of assets from their estates. That is precisely the effect of the California statute as the petitioner would have it applied here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, Jr.,
Assistant Attorney General.
SEWALL KEY,
HELEN R. CARLOSS,
MARYHELEN WIGLE,
Special Assistants to the Attorney General.
WALTER J. CUMMINGS, Jr.,
Attorney.

AUGUST 1944.

APPENDIX

Probate Code of California (1931):

§ 660. *Possession before inventory. Setting aside homestead.* The decedent's surviving spouse and minor children are entitled to remain in possession of the homestead, the wearing apparel of the family, the household furniture and other property of the decedent exempt from execution, until the inventory is filed. Thereupon, or at any subsequent time during the administration, the court, on petition therefor, may in its discretion set apart to the surviving spouse, or, in case of his or her death, to the minor child or children of the decedent, all or any part of the property of the decedent exempt from execution, and must set apart to such spouse or to such minor child or children the homestead selected, designated and recorded, if such homestead was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same.[3]

* * * * *

§ 680. *Right to allowance. Preference.* The widow and minor children are entitled

[3] Section 660 of the Probate Code was formerly Section 1465 of the Code of Civil Procedure and was transferred into the California Probate Code when the latter was first created in 1931. Cases prior to 1931, therefore, refer to the section as 1465 of the Code of Civil Procedure. When the Section was incorporated in the Probate Code, the words "in its discretion" were inserted after the words "the court, on petition therefor, may".

to such reasonable allowance out of the estate as shall be necessary for their maintenance according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not continue longer than one year after granting letters. Such allowance must be paid in preference to all other charges, except funeral charges, expenses of the last illness and expenses of administration, and may, in the discretion of the court or judge granting it, take effect from the death of the decedent.

Internal Revenue Code:

SEC. 311. TRANSFERRED ASSETS.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * *

(f) *Definition of "Transferee".*—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (26 U. S. C. Sec. 311.)

SEC. 3690. AUTHORITY TO DISTRAIN.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (26 U. S. C. Sec. 3690.)

SEC. 3691. PROPERTY EXEMPT FROM DISTRAINT.

(a) *Enumeration.*—There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) *School books and wearing apparel.*—The school books and wearing apparel necessary for such family; also

(2) *Arms.*—Arms for personal use;

(3) *Livestock.*—One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed $50;

(4) *Fodder.*—The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) *Fuel.*—Fuel to an amount not greater in value than $25;

(6) *Provisions.*—Provisions to an amount not greater than $50;

(7) *Household furniture.*—Household furniture kept for use to an amount not greater than $300; and

(8) *Books and tools of trade or profession.*—The books, tools, or implements, of a trade or profession, to an amount not greater than $100.

(b) *Appraisal.*—The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

(26 U. S. C. Sec. 3691.)

SEC. 3692. LEVY.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

(26 U. S. C. Sec. 3692.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.311–1. *Claims in cases of transferred assets.*—The amount for which a transferee of the property of a taxpayer is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended, in respect of any income tax imposed by chapter 1 (paragraph 81 of the Appendix to these regulations), whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by chapter 1, except as hereinafter provided.

The provisions relating to delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency, the authorization of distraint and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with the Board of Tax Appeals, and the filing of a petition for review of the Board's decision, are included in the sections of the Internal Revenue Code (and regulations pertaining thereto) relating to deficiencies in tax imposed by chapter 1.

The term "transferee" as used in this section includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 112, and all other classes of distributees.

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